



Billing Code: 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 251

[FNS-2019-0013]

RIN 0584-AE73

The Emergency Food Assistance Program: Implementation of the Agriculture Improvement Act of 2018

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; request for comments.

SUMMARY: Through this rulemaking, the U.S. Department of Agriculture's (the Department or USDA) Food and Nutrition Service (FNS) is codifying new statutory requirements included in the Agriculture Improvement Act of 2018 (2018 Farm Bill). First, the 2018 Farm Bill requires The Emergency Food Assistance Program (TEFAP) State Plans, at the option of the State agency, to describe a plan of operation for projects to harvest, process, package, or transport donated commodities for use by TEFAP emergency feeding organizations (EFOs), also known as Farm to Food Bank Projects. Second, the Department is requiring TEFAP State agencies to amend their State Plans to describe a plan that provides EFOs or eligible recipient agencies (ERAs) within the State an opportunity to provide input on their commodity preferences and needs. Last, the

Department is establishing the requirements for the projects to harvest, process, package, or transport donated commodities as authorized in the 2018 Farm Bill.

DATES: Effective Date: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment Date: Written comments on this rule must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this final rule. Comments may be submitted in writing by one of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Send comments to Polly Fairfield, Program Analyst, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 506, Alexandria, Virginia, 22302-1592, (703) 305-2680.
- E-Mail: Send comments to TEFAPRuleComments@usda.gov. Include Docket ID Number [FNS-2019-0013], “The Emergency Food Assistance Program: Implementation of the Agriculture Act of 2018” in the subject line of the message.
- All written comments submitted in response to this Final Rule with Request for Comments will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or

entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the Internet via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Polly Fairfield, Program Analyst, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 506, Alexandria, Virginia, 22302-1592, or by email at Polly.Fairfield@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

II. Background and Discussion of Final Rule with Request for Comments

- A. Revisions to TEFAP State Plan Requirements
- B. Farm to Food Bank Project Definition
- C. Farm to Food Bank Project Allocation of Funds
- D. Purpose and Use of Farm to Food Bank Project Funds
- E. Federal Share of Farm to Food Bank Projects
- F. Farm to Food Bank Project Reallocation of Funds
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III. Procedural Matters

I. Public Comment Procedures

Your written comments on this rule should be specific, should be confined to issues pertinent to the rule, and should explain the reason(s) for any change you recommend or oppose. Where possible, you should reference the specific section or paragraph of the rule you are addressing. This rule is effective upon publication. If the Department determines that comments received change any provisions of this rule, the Department will publish a new final rule in the Federal Register. Comments received after the close of the comment period (see DATES) will not be included in the Administrative Record for this rule.

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the regulation clearly stated?
- (2) Does the rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the rule (e.g., grouping and order of sections, use of heading, and paragraphing) make it clearer or less clear?
- (4) Would the rule be easier to understand if it was divided into more (but shorter) sections?
- (5) Is the description of the rule in the preamble section entitled “Background and Discussion of Final Rule with Request for Comments” helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand?

II. Background and Discussion of Final Rule with Request for Comments

The Farm Bill was signed into law on December 20, 2018 (Pub. L. 115-334). Section 4018 of the 2018 Farm Bill included TEFAP-specific provisions and modified the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501-7516) (EFAA). This rule codifies new statutory requirements included in the 2018 Farm Bill by amending TEFAP regulations at 7 CFR part 251. Upon publication, this rulemaking makes the following changes: (1) revises TEFAP State Plan requirements; and (2) establishes the requirements for projects to harvest, process, package, or transport donated commodities for use by TEFAP EFOs, also known as Farm to Food Bank Projects. The amendments are discussed in detail below.

The Administrative Procedure Act (APA) at 5 U.S.C. 553(a)(2) specifically exempts rules involving grants and benefits from notice-and-comment requirements, giving FNS the authority to issue final rules in grants and benefits programs, like TEFAP.¹ FNS does, however, retain the discretion to issue a final rule with a request for comments, and FNS welcomes comments on the specified sections below. The Department is issuing this final rule with request for comments to ensure that the provisions in this rulemaking are implemented as timely as possible to distribute funds to TEFAP State agencies for fiscal year (FY) 2020. The Department determined that prolonging the implementation of these provisions would negatively impact State agencies that administer TEFAP by delaying their ability to access the funds provided by the 2018 Farm Bill. As previously stated, if the Department, upon consideration of the comments received, decides to amend any

¹ Previous USDA practice pursuant to the Statement of Policy published on July 24, 1971 (36 FR 13804) was to utilize APA notice-and-comment rulemaking procedures regardless of the APA's stated exceptions, but that memo was rescinded in 2013. 78 FR 64194.

provisions of the rule, the Department will publish a new final rule in the Federal Register with an explanation of the changes.

A. Revisions to TEFAP State Plan Requirements

Section 4018(a) of the 2018 Farm Bill modified section 202A(b) of the EFAA to require that TEFAP State Plans describe, at the option of the State agency, a plan of operation for one or more projects in partnership with one or more EFOs located in the State to harvest, process, package, or transport donated commodities received under section 203D(d) of the EFAA. Accordingly, this rule amends TEFAP regulations at 7 CFR 251.6(a) to include this new State Plan requirement and to outline what must be included in the State Plan amendment for the plan of operation for such projects. The Department requests comments on the regulatory proposal regarding the plan of operation for a Farm to Food Bank Project.

The 2018 Farm Bill also modified section 202A(b) of the EFAA to require that TEFAP State Plans describe a plan, which may include the use of a State advisory board established under section 202A(c) of the EFAA, that provides EFOs or ERAs within the State an opportunity to provide input on the commodity preferences and needs of the EFO or ERA. The Department does not request comments on the regulatory proposal related to providing input on commodity preferences, as it is a non-discretionary change required by the 2018 Farm Bill.

B. Farm to Food Bank Project Definition

Section 4018(b) of the 2018 Farm Bill amended section 203D of the EFAA and provides a new section 203D(d) that establishes a fund for projects to harvest, process, package, or transport donated commodities for use by TEFAP EFOs. This rule adopts the definition of “project” in section 203D(d)(1) of the EFAA as the harvesting, processing, packaging, or transportation of unharvested, unprocessed, or unpackaged commodities donated by agricultural producers, processors, or distributors for use by EFOs. This rule also codifies the common name for these projects as “Farm to Food Bank Projects” by adding a new paragraph at 7 CFR 251.10(j)(1). The Department requests comments on this section of the rulemaking.

C. Farm to Food Bank Project Allocation of Funds

Section 4018(b) of the 2018 Farm Bill amended section 203D of the EFAA to include a new section 203D(d)(5) that provides \$4 million for each of fiscal years 2019 through 2023, to remain available until the end of the subsequent fiscal year, that the Department must allocate to TEFAP State agencies that have submitted a State plan describing a plan of operation for a Farm to Food Bank Project. Section 4018(b) also amended section 203D of the EFAA to include a new section 203D(d)(2)(C)(i) which directs the Department to determine a formula to allocate these funds each fiscal year.

Thus, the Department is establishing that the Farm to Food Bank Project funds will be allocated to States with an approved State Plan describing a project by using the current TEFAP funding formula found at 7 CFR 251.3(h). The formula in 7 CFR 251.3(h) provides that the amount of funds to be provided to each State will be based on each

State's population of low-income and unemployed persons, as compared to national statistics. Each State's share of funds will be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The Department is also establishing a one-year period of performance for these funds. This rulemaking adds a new paragraph at 7 CFR 251.10(j)(2) to include this allocation formula and period of performance for Farm to Food Bank Project funds. The Department requests comments on this section of the rulemaking.

D. Purpose and Use of Farm to Food Bank Project Funds

Section 4018(b) of the 2018 Farm Bill amended section 203D of the EFAA to include a new section 203D(d)(3) that describes the purpose of Farm to Food Bank Projects as (1) reducing food waste at the agricultural production, processing, or distribution level through the donation of food; (2) providing food to individuals in need; and (3) building relationships between agricultural producers, processors, and distributors and EFOs through the donation of food. This rulemaking adopts this language. It also provides that Farm to Food Bank Project funds may only be used for costs associated with carrying out a Farm to Food Bank Project for the above purpose and cannot be used to purchase foods or for agricultural production activities such as purchasing seeds or planting crops. Thus, this rulemaking adds a new paragraph at 7 CFR 251.10(j)(3) that includes the purpose and use of Farm to Food Bank Project funds. The Department requests comments on this section of the rulemaking.

E. Federal Share of Farm to Food Bank Projects

Section 4018(b) of the 2018 Farm Bill amended section 203D of the EFAA to include a new section 203D(d)(2)(B) that requires that the Federal share of the cost of a Farm to Food Bank Project not exceed 50% of the total cost of the project. Therefore, the Department is requiring that TEFAP State agencies that receive funding for Farm to Food Bank Projects under this Part provide a cash or in-kind contribution equal to the amount of Federal funding received. Allowable contributions for the match must be used for the Farm to Food Bank Project purpose described in §251.10(j)(3) and meet the requirements in §251.9(c). These contributions may include, but are not limited to, cash or in-kind contributions from EFOs that partner with the State agency in administering the Farm to Food Bank Project. This rule also codifies that food donations, including foods donated under a Farm to Food Bank Project, cannot count toward the match requirement. Thus, this rulemaking establishes a new paragraph at 7 CFR 251.10(j)(4) to include the match requirement for Farm to Food Bank Projects. The Department requests comments on this section of the rulemaking.

F. Farm to Food Bank Project Reallocation of Funds

Section 4018(b) of the 2018 Farm Bill amended section 203D of the EFAA to include a new section 203D(d)(2)(C)(ii) that requires the Department to reallocate Farm to Food Bank Project funds if the Secretary determines that a State will not expend all of the funds allocated to it for a fiscal year. The Department is further directed to reallocate the unexpended funds to other States that have submitted a State Plan with a Farm to Food Bank Project plan of operation for a project during that fiscal year or the subsequent

fiscal year as the Secretary deems appropriate. This rulemaking establishes a new paragraph at 7 CFR 251.10(j)(5) to include reallocation of unexpended Farm to Food Bank Project funds to States with an approved State Plan with a Farm to Food Bank Project plan of operation. The Department requests comments on this section of the rulemaking.

G. Farm to Food Bank Project Reporting Requirements

Section 4018(b) of the 2018 Farm Bill amends section 203D of the EFAA to include a new section 203D(d)(2)(C)(iii) that requires that each State receiving Farm to Food Bank Project funds for a fiscal year submit financial reports to the Department on a regular basis which describe the use of the funds. The Department is requiring that Farm to Food Bank Project financial reports be submitted on a semiannual basis using the SF-425 form. This rulemaking therefore establishes a new paragraph at 7 CFR 251.10(j)(6) to include these reporting requirements. The Department requests comments on this section of the rulemaking.

H. Cooperative Agreements

Section 4018(b) of the 2018 Farm Bill amended section 203D of the EFAA to include a new section 203D(d)(4) which allows the Department to encourage a State agency that carries out a Farm to Food Bank Project to enter into cooperative agreements with State agencies of other States to maximize the use of commodities donated under the project. This rulemaking therefore establishes a new paragraph at 7 CFR 251.10(j)(7) to include this provision. The Department requests comments on this section of the rulemaking.

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule with request for comments has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Congressional Review Act:

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. This rule adds additional requirements for TEFAP State agencies but does not have a significant impact on TEFAP ERAs.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process.

This rule is not an EO 13771 regulatory action because it is not significant under EO 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local, or tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for inflation; GDP deflator source:

Table 1.1.9 at <http://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule with request for comments does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The program addressed in this section is listed in the Catalog of Federal Domestic Assistance under Number 10.568 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

The Department has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local

governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988, Civil Justice Reform

This final rule with request for comments has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule with request for comments in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule’s intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in TEFAP.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including

regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. USDA is unaware of any current Tribal laws that could be in conflict with this rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

This rule contains information collections that have been approved by the Office of Management and Budget under OMB# 0584-0293, Food Distribution Programs, expiration date November 30, 2019. In addition, this rule imposes a new requirement to submit a financial report using a form that is approved under OMB# 0584-0594 Food Programs Reporting System (FPRS), expiration date September 30, 2019. FNS has determined that this rule impacts these requirements under OMB# 0584-0293 and OMB# 0584-0594. Due to the timing of this rule and revisions that are being made to the other collections, FNS is including the information requirements that are being impacted by this rule as part of this new information collection. Once this collection has been reviewed and approved by OMB and the revisions to the other collections have been concluded, FNS will merge the requirements into OMB#s 0584-0293 and 0584-0594.

In accordance with the Paperwork Reduction Act of 1995, this final rule with request for comments contains information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from this final rule with request for comments.

Comments on this final rule with request for comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notification will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: The Emergency Food Assistance Program Farm to Food Bank Project Forms

OMB Number: 0584-NEW

Expiration Date: N/A

Type of Request: New Collection.

Abstract: On December 20, 2018, the President signed the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) into law. Section 4018 of the 2018 Farm Bill amends section 202A(b) of the EFAA and adds new requirements to the TEFAP State Plan. State plans must now include a plan to provide emergency feeding organizations or eligible recipient agencies within the State an opportunity to provide input on the commodity preferences and needs of the emergency feeding organization or eligible recipient agency. The reporting burden associated with TEFAP State plans is currently approved under OMB# 0584-0293, Food Distribution Programs, expiration date November 30, 2019. This new requirement would require all 54 TEFAP State agencies to submit a revision to their State plan in the first year of the new requirement. In subsequent years, the burden associated with this requirement will be captured under the existing burden approved under OMB# 0584-0293.

Additionally, at the option of the State agency, State plans may also now include a plan of operation for one or more projects in partnership with one or more emergency feeding organizations located in the State to harvest, process, package, or transport donated commodities received under section 203D(d) of the Emergency Food Assistance Act of 1983. We estimate that the same number of revisions will be made to TEFAP State plans as a result of this requirement and the revisions will take the same amount of time as accounted for in OMB#0584-0293. There will be no change in burden as a result of this requirement.

FNS currently estimates a total of 112 burden hours for completing TEFAP State Plans, with 14 States, each taking 8 hours, to submit such plans. As a result of this rule, FNS estimates that all 54 States will need to submit a TEFAP State Plan containing the

additional requirements. FNS estimates that it will take all of the States an additional 4 hours to incorporate the necessary information into these plans. Therefore, FNS estimates a total of 216 burden hours for these State Plans in the first year of the requirement. In subsequent years, FNS estimates that the burden will remain at 112 burden hours.

Section 4018 of the 2018 Farm Bill also amends section 203D of the EFAA to include a new section 203D(d)(2)(C)(iii) that requires that each State receiving Farm to Food Bank Project funds for a fiscal year submit financial reports to the Department on a regular basis which describe the use of the funds. While States participating in the Emergency Food Assistance Program are required to submit financial reports, this Final Rule is imposing a new requirement for states to file financial reports when they participate in the Farm to Food Bank Project. The Department is requiring that the Farm to Food Bank Project financial reports be submitted on a semiannual basis using SF-425 Federal Financial Report. This form, and its associated reporting burden, is currently approved under OMB# 0584-0594 Food Programs Reporting System (FPRS), expiration date September 30, 2019. Currently, the SF-425 Federal Financial Form is approved with 10,355 responses and 15,533 burden hours. FNS estimates that 14 States will need to file a SF-425 to report on their Farm to Food Bank Project funds. As a result of this Final Rule, FNS estimates a total of 15,575 hours for the SF-425.

Section 203D of the EFAA has been amended to allow the Department to encourage a State agency that carries out a new Farm to Food Bank Project to enter into cooperative agreements with State agencies of other States to maximize the use of commodities donated under the project. FNS estimates that 2 State agencies will enter

into cooperative agreements. FNS further estimates that it will take 1 hour for each State agency to complete these agreements, for a total of 2 burden hours.

Respondents: State Government

Estimated Number of Respondents: 54

Estimated Number of Responses per Respondent: 1.56

Estimated Total Annual Responses: 84

Estimated Time per Response: 3.10

Estimated Total Annual Burden on Respondents: 260

Sec. of Regs/Authority	Title	Form No.	Est. No. of Respondents	Est. No. of Responses per Respondent	Total Annual Responses [(d) X (e)]	Est. Total Hours per Response	Est. Total Burden [(f) X (g)]	Currently Approved Burden	Program Change due to rulemaking
								OMB# 0584-0293	
251.6(b)(6)	State Agency Distribution Plan	--	54	1.00	54.00	4.00	216.00	112.00	104.00*
								OMB# 0584-0594	
251.10(j)(6)	Reporting Requirements	FNS- 425	14	2.00	28.00	1.50	42.00	15,533	42 (15,575)
251.10(j)(7)	Cooperative Agreements	--	2	1.00	2.00	1.00	2.00	0	2
TOTAL REPORTING			54	1.56	84.00	3.10	260.00	15,645.00	148.00

*additional burden for first year only

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased

opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 251

Food assistance programs, Grant programs-social programs, Reporting and recordkeeping requirements, Surplus agricultural commodities

Accordingly, 7 CFR part 251 is amended as follows:

PART 251 – THE EMERGENCY FOOD ASSISTANCE PROGRAM

1. The authority citation for part 251 is revised to read as follows:

Authority: 7 U.S.C. 7501-7516; 7 U.S.C. 2011-2036.

2. In §251.6, revise paragraphs (a)(3) and (4) and add paragraphs (a)(5) and (6) to read as follows:

§ 251.6 Distribution plan.

(a) * * *

(3) A description of the standards of eligibility for recipient agencies, including any subpriorities within the two-tier priority system;

(4) A description of the criteria established in accordance with §251.5(b) which must be used by eligible recipient agencies in determining the eligibility of households to receive the Emergency Food Assistance Program (TEFAP) commodities for home consumption;

(5) At the option of the State agency, a plan of operation for one or more projects in partnership with one or more emergency feeding organizations located in the State to harvest, process, package, or transport donated commodities received under section

203D(d) of the Emergency Food Assistance Act of 1983. The plan must include all items listed in paragraphs (a)(5)(i) through (iv) of this section:

(i) A list of emergency feeding organizations within the State that will operate the project in partnership with the State agency.

(ii) A list of any State agencies that will operate the project as a part of a cooperative agreement.

(iii) A description of the purpose of the Farm to Food Bank Project that includes how the Project will:

(A) Reduce food waste at the agricultural production, processing, or distribution level through the donation of food;

(B) Provide food to individuals in need; and

(C) Build relationships between agricultural producers, processors, and distributors and emergency feeding organizations through the donation of food.

(iv) The fiscal year in which the Project will begin operating; and

(6) A plan, which may include the use of a State advisory board established under §251.4(h)(4), that provides emergency feeding organizations or eligible recipient agencies within the State an opportunity to provide input on the commodity preferences and needs of the emergency feeding organization or eligible recipient agency.

* * * * *

3. In §251.10, add paragraph (j) to read as follows:

§ 251.10 Miscellaneous provisions.

* * * * *

(j) *Projects to harvest, process, package, or transport donated commodities*--(1)

Definition of project. These projects, also known as Farm to Food Bank Projects, are defined as the harvesting, processing, packaging, or transportation of unharvested, unprocessed, or unpackaged commodities donated by agricultural producers, processors, or distributors for use by emergency feeding organizations under section 203D of the Emergency Food Assistance Act of 1983.

(2) *Availability and allocation of funds.* Funds for the costs of carrying out a Farm to Food Bank Project will be allocated to States as follows:

(i) Funds made available to the Department for Farm to Food Bank Projects will be distributed to States that have submitted an approved State plan describing a plan of operation for a Farm to Food Bank Project.

(ii) Funds for Farm to Food Bank Projects will be distributed each fiscal year to State agencies with an approved State plan for a project in that fiscal year using the funding formula defined in §251.3(h).

(iii) Funds will be available to State agencies for one year from the date of allocation.

(3) *Purpose and use of funds.* State agencies may only use funds made available under this paragraph (j) for the costs of carrying out a Farm to Food Bank Project.

(i) Farm to Food Bank Projects must have a purpose of:

(A) Reducing food waste at the agricultural production, processing, or distribution level through the donation of food;

(B) Providing food to individuals in need; and

(C) Building relationships between agricultural producers, processors, and distributors and emergency feeding organizations through the donation of food.

(ii) Project funds may only be used for costs associated with harvesting, processing, packaging, or transportation of unharvested, unprocessed, or unpackaged commodities donated by agricultural producers, processors, or distributors for use by emergency feeding organizations.

(iii) Project funds cannot be used to purchase foods or for agricultural production activities such as purchasing seeds or planting crops.

(4) *Matching of funds--(i) State matching requirement.* The State must provide a cash or in-kind contribution at least equal to the amount of funding received under this paragraph (j) for a Farm to Food Bank Project.

(ii) *Allowable contributions.* States shall meet the match requirement in paragraph (a)(4) of this section by providing allowable contributions as described at §251.9(c); contributions must only be for costs which would otherwise be allowable as a Farm to Food Bank Project cost.

(iii) *Emergency feeding organization contributions.* Cash or in-kind contributions from emergency feeding organizations that partner with the State agency to administer the Farm to Food Bank Project are allowable.

(iv) *Food donations.* Donations of foods, including the value of foods donated as a part of a Farm to Food Bank Project, cannot count toward the match requirement in paragraph (j)(4) of this section.

(5) *Reallocation of funds.* If, during the course of the fiscal year, the Department determines that a State will not expend all of the funds allocated to the State for a fiscal year under this paragraph (j), the Department shall reallocate the unexpended funds to

other States that have an approved State Plan describing a plan of operation for a Farm to Food Bank Project during that fiscal year or the subsequent fiscal year.

(6) *Reporting requirements.* Each State agency to which Farm to Food Bank Project funds are allocated for a fiscal year must submit a report describing use of the funds. The data must be identified on Form SF-425, Federal Financial Report, and submitted to the appropriate FNS Regional Office on a semiannual basis. The report must be submitted no later than 30 calendar days after the end of the period to which it pertains. The final report must be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(7) *Cooperative agreements.* State agencies that carry out a Farm to Food Bank Project may enter into cooperative agreements with State agencies of other States to maximize the use of commodities donated under the project.

* * * * *

Dated: September 17, 2019.

Pamilyn Miller,
Administrator,
Food and Nutrition Service.

[FR Doc. 2019-21665 Filed: 10/3/2019 8:45 am; Publication Date: 10/4/2019]